

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES GORDON FREEMAN,)
)
 Petitioner,)
v.) No. 3:06-0106
) JUDGE ECHOLS
WARDEN DAVID MILLS,)
)
 Respondent.)

ORDER

Pending before the Court are the Report and Recommendation ("R&R") entered by the United States Magistrate Judge on September 26, 2006 (Docket Entry No. 18), Defendant's Motion for Summary Judgment (Docket Entry No. 8), to which Petitioner filed a response (Docket Entry No. 14), and Petitioner's Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket Entry No. 1). Petitioner has not filed any objections to the Magistrate Judge's R&R.¹

In reviewing an R&R, the Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

¹The Clerk attempted to send a copy of the R&R to Petitioner by certified mail using an incorrect prison address. When the mail was returned, the Clerk again sent a copy of the R&R to Petitioner's last known prison address by certified mail, return receipt requested. The green card was signed and returned by Plaintiff as received on October 12, 2006. Petitioner still has not filed any objections.

Having carefully reviewed the entire record in this case, the Court finds that no error of fact or law appears in the R&R.

However, with regard to Petitioner's claim that the State presented insufficient evidence to support his conviction for especially aggravated kidnaping, the Court modifies the R&R to add that the Tennessee Court of Criminal Appeals, in resolving Petitioner's direct appeal, thoroughly discussed the evidence and concluded a rational trier of fact could have found, beyond a reasonable doubt, that Petitioner stole the car with the knowledge that the five-year old victim was in the car. (Docket Entry No. 10, Notice of Filing Documents, Addendum No. 1, State v. Freeman, No. M1998-00182-CCA-R3-CD, 1999 WL 1073694 at *2-4 (Tenn. Crim. App. Nov. 29, 1999)). Proof of Petitioner's knowledge was essential to his conviction for especially aggravated kidnapping. The state court's determination that sufficient evidence supported the conviction is neither contrary to clearly established federal law, nor did it involve an unreasonable application of federal law in light of the evidence. Accordingly,

(1) the R&R of the Magistrate Judge (Docket Entry No. 18) is hereby ADOPTED AS MODIFIED.

(2) Respondent's Motion for Summary Judgment (Docket Entry No. 8) is hereby GRANTED.


(3) The Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket Entry No. 1) is hereby DENIED.

(4) This case is hereby DISMISSED WITH PREJUDICE.

(5) Entry of this Order on the docket shall constitute entry of final Judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

(6) Because Petitioner cannot demonstrate that reasonable jurists would find the Court's assessment of the constitutional claims debatable or wrong, a Certificate of Appealability will not issue. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", is written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE